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ABSTRACT

Designed for public officials who must make policy decisions concerning cable television, this booklet forms a checklist to ensure that all basic questions have been considered in drafting an ordinance. The purpose of a cable television ordinance is to develop a law listing the specifications and obligations that will govern the franchising of a local operator. Items surveyed are: 1) provisions governing the length, renewal and transfer of a certificate or franchise; 2) franchise territory; 3) system design; 4) technical performance standards; 5) local regulatory framework; and 6) the applicant selection process. Most all the items mentioned are accompanied by working examples drawn from various American communities. (MC)

Cable Television
Information Center
the urban institute

How to Plan
an Ordinance

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HOW TO PLAN AN ORDINANCE:

An Outline and Some Examples

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CABLE TELEVISION INFORMATION CENTER

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PREFACE

This document was prepared by the Cable Television Information Center under grants from the Ford Foundation and the John and Mary R. Markle Foundation to The Urban Institute.

The primary function of the center's publications program is to provide policy makers in local and state governments with the information and analytical tools required to arrive at optimum policies and procedures for the development of cable television in the public interest.

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HOW TO USE THE ANNOTATED ORDINANCE

In the past, many local ordinances were also franchises, written to govern a specific applicant after the application had been submitted to the franchising authority and a decision made about who was to operate the system. The outline which follows is divided into ordinance sections, each section directed primarily to a process that will first enact an ordinance to govern cable locally and then seek applicants to operate the system.

However, the material can still be used to write a franchise-ordinance by first performing the procedures of Section IX dealing with applicant selection. The outline is also useful where municipal operation is proposed and where a franchise has expired or is being rewritten to comply with Federal Communications Commission standards by the commission's 1977 deadline.

Although the outline does not work out a specific regulatory mechanism for municipal ownership, the issues posed are the same. They will have to be answered no matter who operates the system.

The table of contents presents all the ordinance areas covered in this document; it could easily form a checklist to ensure that all basic questions have been considered in drafting the ordinance. Most of these topics include a checklist to be considered in writing the section. In a few instances, typical self-explanatory examples are given without discussion.

The examples, along with the discussion and checklist, can serve as a basis for drafting.

I. PURPOSE OF THE ORDINANCE AND THE NATURE OF THE GRANT—JURISDICTIONAL BASIS FOR THE LOCAL FRANCHISING AUTHORITY'S POWER

The purpose of a CATV ordinance as viewed in this document is to develop a law listing the specifications and obligations that will govern the franchising of a local cable television operator. Local franchising entities (nonstate bodies) where no special state legislation exists usually exercise an implied or explicit power over the use of local streets, alleys, and public ways. This power is usually viewed as encompassing the right to require a potential cable operator to obtain the local authority's permission to use the streets on more than a temporary basis for carrying on a business in the nature of a public utility.

In addition to stating specific obligations placed upon a franchisee from the outset, franchise authorities often reserve the right to alter or modify the obligations as circumstances change. Such reservations are necessitated by constitutional provisions which view franchise contracts as establishing property rights which cannot be altered. To avoid this problem the ordinance should contain clauses that will allow for future changes.¹

The local franchising authority should also be aware that the exercise of its authority is an integral part of the FCC's certification process. Unless a cable operator can demonstrate that the local government has looked at its qualifications and plans, the system cannot begin operation. The commission has stated that a cable operator cannot avoid this obligation by obtaining channel service from a telephone company.

Furthermore, if a local government believes it has no power to issue a franchise, a cable operator must still demonstrate an acceptable alternative to the franchising method. Under such circumstances, the area to be served, regardless of local law, should conduct some proceeding to assess how a potential operator will meet the public interest and make these views known when the operator seeks certification.

In addition, a cable operator is expected to notify all authorities that assert a claim to jurisdiction when he seeks certification. This will be important where local and state authorities both claim exclusive jurisdiction. It is also necessary in some states with state legislation—principally Alaska, Connecticut, Hawaii, Massachusetts, New York, Nevada, Rhode Island and Vermont—to determine how these laws restrict local regulation of cable.

Once a franchise authority has determined its basic limits of authority, it then considers the various obligations and specifications that a franchisee will be subject to. For the franchisee to obtain certification, the franchising authority must have limited the franchise to 15 years, inquired into the franchisee's character and qualifications, and assessed its construction plans. There must also be procedures for setting rates and handling consumer complaints.

The general clause that states what rights the franchise grants usually gives the reason for regulation and ties it to the local authority's power. At the same time, the grant is usually made nonexclusive in order to allow the municipality to seek a new operator if the franchisee fails to perform adequately.

¹ Where an ordinance already exists there are some remedies for modification that have been suggested. First, all contracts are subject to the power of eminent domain. Stephen Barnett, ("State, Federal and Local Regulation of Cable Television," *Notre Dame Lawyer*, April 1972) suggests that in some states where franchises have been granted but not exercised, there is not a binding contract. He also advises that if a city is exercising its implied or explicit power for regulating local public utilities, the award of a franchise does not foreclose changes in the system's obligations after the franchise is issued. This is true, Barnett explains, because of the crucial role a cable system plays in the community, its monopoly status, and the broader constitutional leeway that attaches to public utility regulation.

The local authority should also assess whether voter approval is necessary to effectuate a valid grant of authority and make this a condition of the franchise.

Checklist

- Ascertain and determine the source of the franchising or certifying body's power to act.
- Limit the franchise period to no more than 15 years.
- Explicitly list what restrictions the franchise is subject to.
- Check the limitations of state legislation.
- Check whether voter approval is necessary and should be included as a condition of a grant.

Example *a*, which follows, clearly sets out the reservations which should exist in all grants. It combines the purpose of the ordinance with the type of permission being granted.

- Permission to operate a CATV system is provided.
- The period of operation is limited to 15 years—FCC rule Section 76.13(a)(3) provides that a franchise period cannot exceed 15 years.
- The grant is specifically subjected to the restrictions and conditions which follow in the ordinance (some ordinances list the restriction and conditions in the grant).
- And it ensures periodic reviews and establishes who will make them.

Example *a*

Section 14.702 Franchise Grant. The franchise to be granted by Howard County pursuant to this Act shall grant to the Grantee, the right, privilege and franchise to construct, operate and maintain a Community Antenna Television System in the streets and roads of Howard County for a period of fifteen (15) years from and after the grant and acceptance date of the franchise to be awarded subject to the conditions and restrictions as hereinafter provided, and further provided that the County Executive and County Council shall have the right to review such franchise periodically at such time as the County Executive and the County Council may from time to time elect to do so and as hereinafter provided.

Section 14.704 Authority Not Exclusive. The right to use and occupy said streets and roads for the purpose herein set forth shall not be exclusive and Howard County reserves the right to grant a similar use of said streets and roads to any persons, company, corporation, or any other entity, at any time during the period of the franchise issued pursuant to this Act.

(Howard County, Maryland)

Example *b* first states the purpose of the regulation, then requires that a certificate of public convenience and necessity be obtained before operation may commence. Taken from the Arlington, Virginia, ordinance, the example adopts a public utility type regulation for cable and reserves in clause (d) and (e) broad powers to meet the public interest in the future. Through state legislation, Arlington was granted the authority to regulate cable in this manner.

Example *b*

Section 41 - 1. The purpose of this chapter is to provide for the regula-

tion and control of community antenna television (CATV) systems in Arlington County in the public interest.

Section 41 - 3. Certificate of Public Convenience and Necessity.

(a) The county will grant the company a certificate for the occupation or use of the streets within the county for the construction, operation and maintenance of a system.

(b) The certificate shall become effective on the date ratified by the company after having been awarded by the Board in accordance with applicable law. It shall remain effective for ten years, unless sooner terminated as herein provided. The company shall have the option to continue operations for a further ten (10) year period, subject to approval by the Board and with such modification of terms as the Board may determine.

(c) Nothing in this ordinance shall affect the right of the county to grant to any other person a certificate or right to occupy and use the streets or any part thereof for the construction, operation, and maintenance of a broadband communications facility within the county, and the company shall not take a legal position contesting the Board's right to authorize such use of the streets or any part thereof; provided, however, that nothing contained in this subdivision shall prohibit the company from appearing before the Board and being heard on any application for the grant of such right.

(d) Nothing in this ordinance shall be in preference or hindrance to the right of the county or any board, authority, commission or public benefit corporation to perform or carry on any public works or public improvements of any description, and should the system in any way interfere with the construction, maintenance, or repair of such public works or public improvements, the company shall, at its own cost and expense, protect or relocate its system, or part thereof, as reasonably directed by the county officials, board, authority, commission or public benefit corporation.

(e) Nothing in this ordinance shall be construed as a waiver of the county's right to require any person utilizing the system to secure consent or other appropriate permission authorizing such use.

(Arlington County, Virginia)

Example c illustrates the type of provision used where the city has already selected the applicant. It lists all the authority that is granted and that which is reserved. The franchise period given in the example below is now contrary to the FCC's rules.

Example c

An ordinance granting to Orange Cablevision, Inc. a nonexclusive franchise to install, maintain and operate a cable system for the distribution of television signals, frequency modulated radio signals and closed circuit television programs for a term ending April 7, 1990; providing conditions, limitations and requirements; stipulating protective and indemnity provisions; providing for the purchase of the system by the City of Orlando; providing for certain payments to the City of Orlando; providing for charges and rates; providing for acceptance by Grantee; imposing duties on Grantee at the expiration of its franchise; prohibiting assignments, sub-leases and encumbrances; providing for extension of franchise to

newly annexed territories; providing for the separability of the parts hereof; and providing an effective date.

(Orlando, Florida)

II. SHORT TITLE

As is typical in most comprehensive acts, a short title is often provided for reference, either in other documents or in the ordinance being enacted. The title should reflect the purpose of the act. Example *a* is a title taken from a franchising act while *b* is a local public utility act. Example *c* is a title given to an act where legislation was written after an applicant was selected. Example *d* asserts a purpose aside from the nature of the grant and looks toward a plan for regulation after the franchise has been issued.

Example a

Cable Rules and Regulation Ordinance

Example b

Cable Regulation and Cable Certificates

Example c

Newhouse Broadcasting Corporation, Franchise and Permit Resolution,
Town of Manlius, Fayetteville, New York, Onondaga County

Example d

CATV Regulatory Surveillance Act

III. DEFINITIONS

Terms defined in a cable ordinance usually represent words or phrases which are essential to the document. Any definition, while it should reflect use in the ordinance, should also be consistent with the FCC's use of the word. Existing ordinances frequently contain definitions inconsistent with meanings in the federal rules. To write correct definitions the drafters should be familiar with the commission's rules and how the variance proposed by the local regulatory program will be affected by FCC limitations. See Section 76.5, 47 CFR 76.5. Ordinances usually preface the term defined with the caveat that the definition given will apply "unless the context clearly indicates that a different meaning is intended."

A. Checklist

- Define terms that will ease understanding of the local regulatory program.
- Compare those words defined with the FCC rules.
- Consider the examples and comments listed here.

B. List of Words Defined

Agency

Cablecasting, Origination and Access

CATV

Certificate Holder

Channels

Converter

District

Gross Receipts, Revenues, Gross Annual Receipts

Service, Basic and Additional

Subscriber

Street, Highway

System

Two-Way Capability

User

Agency The County Board in Arlington designated the county manager as the "agency."

"Agency" means the person, department, or agency designated by the Board to act in matters related to CATV.

(Arlington, Virginia)

Cablecasting, Origination and Access The FCC's definitions refer to use of non-broadcast channels as cablecasting channels. There are two kinds—access and origination channels. Access cablecasting includes the public, governmental, and educational channels, along with leased channels. The definitions are given below:

FCC Section 76.5(v) Cablecasting. Programming (exclusive of broadcast signals) carried on a cable television system. See paragraphs (aa), (bb), and (cc) (Class II, III and IV cable television channels) of this section.

(w) Origination cablecasting. Programming (exclusive of broadcast signals) carried on a cable television system over one or more channels, and subject to the exclusive control of the cable operator.

(x) Access cablecasting. Services provided by a cable television system on its public, educational, local government, or leased channels.

CATV The first example is the FCC's definition of CATV. The commission asserts jurisdiction only over those systems that carry television and radio signals. Whether or not a broadband system that carries no broadcast signal is subject to federal standards is a question the commission has not decided.

For local governments, regulation of cable systems not included in the FCC definition will often depend on whether city streets are used. The franchising authority should be aware that exclusion of large apartment complexes and trailer courts will alter the possibility of providing uniform service to the whole community.

Example a

76.5 Definitions. (a) Cable television system (or CATV system). Any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility that serves fewer than 50 subscribers, or (2) any such facility that serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house. (47 CFR 76.5(a))

The following example differs from Example *a* in that it provides a description of what a cable system will be in terms of technology but does not include or exclude areas in the community that will receive services.

Example b

"Community Antenna Television System" shall mean a system of antennas, cables, wires, lines, towers, waveguides, laser beams, or any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and from subscribers and locations in and outside the City of Peoria, Illinois. It may also be referred to as "Broadband Cable Communications System."

(Peoria, Illinois edited version)

Example c

"Community Antenna Television System" referred to in this article as CATV system, shall mean any facility which receives directly or indirectly over the air or otherwise and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or FM radio stations and distributes such signals by wire or cable or other restricted radiation point-to-point means to subscribing members of the public who pay for such service, but such term shall not include any such facility which serves only the residents of one or more apartment dwellings under common ownership, control, or management and commercial establishments located on the premises of such an apartment house.

(San Diego, California)

Certificate Holder

"Certificate-Holder" means the person or company awarded a "Certificate of Public Convenience and Necessity" for the operation of a CATV system in Arlington County, the "Certificate" to be awarded in accordance with the provisions of applicable law, including this ordinance.

(Arlington, Virginia)

Channels Many ordinances define channel functions and uses. The FCC has defined the types of channels in terms of classes that provide signal paths for different functions. Consistent use of these terms will simplify regulation at all levels. The FCC's definitions are followed by the commission's comments about each definition.

FCC Section 76.5(a) Class I cable television channel: A signalling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

FCC Comment Class I cable channel: This definition is intended to designate those cable channels devoted to delivering standard broadcast television signals picked up off the air at the headend or delivered to the cable network by microwave or provided by direct connection to a local television broadcast station. Class I cable channels are subject to the technical standards adopted herein.

(aa) Class II cable television channel: A signalling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.

FCC Comment Class II cable channel: This is intended to designate those channels used for the delivery of cablecast programming. Technical standards are not now being provided for these channels. Class II cable channels are those used for television signals not obtained from television broadcast stations but that are intended to display pictures on subscriber television receivers without the use of decoding devices. Channels carrying television pictures purposely encoded or processed to permit reception by only selected subscribers are not included in this category.

(bb) Class III cable television channel: A signalling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

FCC Comment Class III cable channel: In addition to television pictures, cable systems are likely to deliver to subscribers other forms of communication. We recognize the potential for a wide diversity of communications, some of which will require terminal equipment in subscriber homes. Some of these involve analog signals; others make use of digital signals. Not all require a full 6 MHz of bandwidth. Class III cable channel uses might include: encoded television signals which require special decoding equipment at the subscriber terminal, FM or AM broadcast signals, and facsimile and printed message material. Obviously, no single set of technical standards can embrace so many differing kinds of signals. We are not proposing standards for Class III cable channels at this time, but as the need becomes apparent, appropriate standards will be provided.

(cc) Class IV cable television channel. A signalling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.

FCC Comment Class IV cable channel. This class will apply to "return" or "response" channels. At this time plans for use of those channels envision a relatively narrow band of frequencies that will be used to return limited amounts of information from subscriber to control point. Although it is too early to provide technical standards for such communications, it is expected that standards will be required.

Converter

"Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations.

(New York City)

District

The area within which the cable operator will provide service.

Gross Receipts, Revenues, Gross Annual Receipts Gross receipts are of concern to franchising authorities for two reasons. First, the amount of subscriber revenues a system generates serves as the measuring point for a franchise fee. (FCC requirements permit the setting of the fee based on three to five per cent of the gross subscriber revenues.) Second, local franchising authorities must also set initial rates for subscriber services and increases in these rates. For this purpose, the franchising

authority needs broader revenue information. The definitions given below reflect these two interests.

Example a

"Total Subscriber Revenue"—Any and all compensation and other consideration in any form paid by a subscriber and received by the Grantee arising from the sale of its regular monthly service to its subscribers, whether within or without the City, shall be considered in computing said sum, not including, however, any sales, service, rent, occupational or other excise tax to the extent such taxes are charged separately in addition to the regular monthly service charge and are remitted by Grantee to the taxing authority.

(Rockford, Illinois)

Example b

"Gross Receipts" means all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parents, and any person in which the Company has a financial interest, from or in connection with the operation of the System pursuant to this contract, excluding, however, revenues derived from provision of a separate service which uses the System for transmission but including an amount equivalent to what an outside party would have paid for such transmission.

(New York City)

Example c

"Gross Receipts" means all revenue derived directly or indirectly by the Company, its affiliates, subsidiaries, parents, and any person in which the Company has a financial interest, from or in connection with the operation of the System.

(Arlington, Virginia)

Example d

"Total Gross Receipts" shall mean any and all compensation and other consideration collected or received or in any manner gained or derived by Grantee from the operation of its CATV service within the corporate limits of The City of San Diego as such corporate limits now exist or may be established hereafter.

(San Diego, California)

Example e

"Local Gross Revenues" shall mean those gross revenues of the franchisee attributable to users within the City including, but not limited to, monthly subscriber revenue, advertising revenue which originates and terminates locally, and any new local services provided by franchise on its CATV system, provided however that revenue resulting from installation and relocation charges or from sales of tangible property shall not be deemed "local gross revenues" for the purpose of computing any franchise fee pursuant to this Ordinance. To the extent that franchisee's books of account do not reflect the source of any gross revenue, that portion of gross revenue allocable to the City shall be based on the ratio of the number of subscribers in the City to the number of subscribers outside the City. "Local Gross Revenues" shall not include proceeds from any service,

installation, facilities or signal carriage which may originate or terminate outside the State of Michigan.

(East Lansing, Michigan, draft)

Service, Basic and Additional

(a) "Basic Service" means the simultaneous delivery by the Company to television receivers (or any other suitable type of audio-video communication receivers), of all subscribers and to all locations in the District of all signals of over-the-air television broadcasters required by the Federal Communications Commission (hereinafter, "F.C.C.") to be carried by a community antenna television system as defined by the F.C.C.; the channels designated for special purposes by the County Council or its authorized representative; Education Channels; Public Access Channels; Lease Channels; and Additional Service at the option of the Company; however, pay or subscription television as defined by the F.C.C. shall not be considered part of the basic service.

(b) "Additional Service" means any communications service other than Basic Service, provided over its System by the Company directly or as a carrier for its subsidiaries, affiliates or any other person engaged in communications services including, by way of example but not limited to, burglar alarm, data or other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.

(Arlington, Virginia)

Subscriber

Example a

"Subscribers"—Any person, firm, corporation or other entity receiving for any purpose the service of the Grantee herein.

(Rockford, Illinois)

Example b

"Subscriber" shall mean a purchaser of any service delivered over the CATV system and includes those persons who are not required to pay any fee because of their exemption from fees by this ordinance.

(Peoria, Illinois)

Example c

"Residential Subscriber" means a purchaser of any service delivered over the System to an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

(New York City)

Example d

"Subscriber" shall mean a person or organization which is physically wired to receive any transmission from the System.

(East Lansing, Michigan, draft)

Street, Highway

"Streets" means streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, alleys, all other public rights of way, and public grounds or waters within or belonging to the County.

(Arlington, Virginia)

System

"System" means the broadband communications facility which is to be constructed, operated and maintained by the Company in Arlington County.

(Arlington, Virginia)

Two-Way Capability In considering this definition, look at 76.26(a)(3) of the FCC rules which defines two-way communications capability as "having technical capacity for nonvoice return communications." The example below goes beyond the FCC requirement, which requires only that a system have the capability for non-video two-way return, by requiring an active system. The commission gives the following explanation of what is required:

We are now requiring cable systems to install necessary return communication devices at each subscriber terminal. Such a requirement is premature in this early stage of cable's evolution. It will be sufficient for now that each cable system be constructed with the potential of eventually providing return communication without having to engage in time-consuming and costly system rebuilding. This requirement will be met if a new system is constructed either with the necessary auxiliary equipment (amplifiers and passive devices) or with equipment that could easily be altered to provide return service. When offered, activation of the return service must always be at the subscriber's option.

To set up pilot projects which will go beyond this requirement, the operator and the franchising authority must "demonstrate its feasibility both practically and economically" at the time the system is certified.

"Two Way Capability" means the subscriber or any other location shall have the capability to choose whether or not to respond immediately, or by sequential delay by utilizing any type of terminal equipment whatever, by pushbutton code, dial code, meter, voice, video signal, or by any other means, to any type of electronic, including but not limited to audio and video, electrical or mechanically produced signal, display and/or interrogation.

(Howard County, Maryland, draft)

User

"User" denotes a person or organization utilizing a system channel for purposes of production and/or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.

(East Lansing, Michigan, draft)

IV. PROVISION GOVERNING THE LENGTH, RENEWAL, AND TRANSFER OF A CERTIFICATE OR FRANCHISE

FCC regulations limit the period a franchise may be granted to a maximum of 15 years, and state that a system must be recertified even if the franchise is renewed at the end of the franchise period. The rules set no requirements for transferring franchises. They do, however, prohibit television stations and telephone companies from owning systems in their service areas.

A. Length of Franchise

In the past, most franchise periods have been in the neighborhood of 10 to 20 years. Some have been shorter; a good many have been longer.

While there are no known examples of periods related to service requirements, the FCC has suggested such an arrangement. For example, the franchise period might be tied to the building of origination centers or special rates for less affluent segments of the community. The point is that the time period that operation can be assured should bear some relationship to the service that the system offers.

Most ordinances include a provision that the grant is nonexclusive to ensure performance during the franchise period. A nonexclusive grant does not limit the period of years during which operation is permitted, but serves as an enforcement device by allowing the community to seek another operator in case the initial franchisee fails to perform adequately.

B. Renewal

Whatever the length of the franchise, eventually the local government must decide what standards should mark the next franchise period and whether the current operator should continue. The renewal period has proven to be a period of great pressure on the city, with the cable operator often threatening to discontinue service immediately unless renewal is promised. The commission has suggested that franchises contain specific "buy back" or continuation of service provisions to protect the public's right to continuity of service while a new franchise is being prepared.

The franchising authority will also have to devise a renewal procedure. The ordinance might provide criteria for measuring whether renewal should be granted. Section IX of this outline could serve as a basis for developing a system for review at the time of renewals.

This example seeks a method to ensure service at the close of a franchise period.

If this franchise: (i) is cancelled by the Board by reason of the Company's default, that part of the System located in the streets shall, at the election of the City, become the property of the City at a cost not to exceed its then book value (i.e. cost less accumulated depreciation) according to generally accepted accounting principles, with a reduction for any damages incurred by the City in connection with such cancellation. Such book value if not agreed upon, shall be determined by arbitration pursuant to Section 20 of this contract, but shall not include any valuation based upon this franchise. Damages incurred by the City shall include, without limitation, any payment made by the City pursuant to a resolution of the Board authorizing or directing another person to operate the System for a temporary period until a franchise therefor is granted.

(ii) terminates by expiration of its term, the purchase price to the City for the System shall be its then fair value as determined by arbitration held pursuant to Section 20 of this contract. Beginning within two years prior to expiration and whether or not the City has then elected to purchase the System, either the City or the Company may demand an arbitration pursuant to Section 20 of this contract, for the purpose of determining fair value of the System on the date arbitration was demanded, which determination shall be subject to correction or adjustment by the arbitrators to reflect the fair value on date of expiration, to be paid by the City if it elects to purchase the System. Such fair value shall be the fair value of all tangible and intangible property forming part of the System but shall not include any valuation based

upon this franchise. If the City does not purchase the System, the Company shall remove that part of the System located in the streets and restore the streets to a condition satisfactory to the Commissioner of Highways.

(h) Upon the cancellation by the Board, or upon the expiration, of any other franchise to construct, maintain and operate a broadband communications facility, the Board may, by resolution, direct the Company to operate the same for the account of the City for a period of six (6) months and the Company agrees to comply with such directions. The City shall pay the Company all reasonable and necessary costs incurred by it in operating such broadband communication facility.

(New York City)

C. Transfer, Assignments

The franchising authority must set criteria for what amounts to assignment or transfer of a franchise and procedures to guide in determining whether a transfer should be approved. While none of the examples below prohibit transfer, the right to transfer should be limited at the initial stages of the system's development, and perhaps flatly forbidden before construction, to avoid trafficking in franchise awards.

These examples work out the problem using slightly different criteria but similar procedures.

Example a

Transactions Affecting Ownership of Facilities. Section 25

(a) In order that the city may exercise its option to take over the facilities and property of the CATV system authorized herein upon expiration or forfeiture of the rights and privileges of the grantee under the franchise, as is provided for herein, subsequent to the initial construction and operation of the CATV system, the grantee shall not make, execute, or enter into any deed, deed of trust, mortgage, conditional sales contract, or any loan, lease, pledge, sale, gift, or similar agreement concerning any of the facilities and property, real or personal, of the CATV business without prior approval of the Board upon its determination that the transaction proposed by the grantee will not be inimical to the rights of the city under the franchise; provided, however, that this section shall not apply to the disposition of worn out or obsolete facilities or personal property in the normal course of carrying on the CATV business.

(b) Except as provided for in Section 25(a), the grantee shall at all times be the full and complete owner of all facilities and property, real and personal, of the CATV business.

Change of Control of Grantee. Section 26

(a) Prior approval of the Board shall be required where ownership or control of more than twenty-five (25) percent of the right of control of the grantee is acquired by a party or group of parties acting in concert, none of whom already owns or controls twenty-five (25) percent or more of such right of control, singularly or collectively.

(b) Prior approval of the Board shall be required where the ownership or control of the right of control of the grantee by parties permanently

resident in the City of Wichita Falls or Wichita County decreases below twenty (20) percent.

(c) By its acceptance of the franchise, the grantee specifically grants and agrees that any such acquisition occurring without prior approval of the Board shall constitute a violation of the franchise by the grantee. Failure to obtain approval of the Board or to return ownership or control to the previously acceptable level within three (3) months shall constitute a breach of condition for which the remedy of Section 6(d) is applicable. (Section 6(d) provides for a faithful performance bond running to the City to be maintained.) Continuing failure to obtain approval of the Board or to return ownership or control to the previously acceptable level for any subsequent three (3) month period shall constitute a separate breach of a condition for which the remedy of Section 6(d) is applicable.

(proposed ordinance, Wichita Falls, Texas)

Example b

Restrictions Against Assignment. Section 41 - 18.

(a) The Certificate shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person, either by the act of the Company or by operation of law, without the consent of the Board. The granting, giving or waiving of any one or more such consents shall not render unnecessary any subsequent consent or consents.

(b) The consent or approval of the Board to any assignment, lease, transfer, sublease, or mortgage of the Certificate granted to the Company shall not constitute a waiver or release of the rights of the County in and to the streets.

(c) The Company shall promptly notify the Board and Agency of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company. The word "control" as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Company shall make the Certificate subject to cancellation unless and until the Board shall have consented thereto. For the purpose of determining whether, it shall consent to such change, transfer or acquisition of control, the Board may inquire into the qualifications of the prospective controlling party, and the Company shall assist the Board in any such inquiry. If the Board does not schedule a hearing on the matter within sixty (60) days after notice of the change or proposed change and the filing of a petition requesting its consent, it shall be deemed to have consented. In the event that the Board adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the Board may cancel the Certificate unless control of the Company is restored to the change, or to a status acceptable to the Board.

(c) The consent or approval of the Board to any assignment, lease, transfer, sublease, or mortgage of the Certificate granted to the Company shall not constitute a waiver or release of the rights of the County in and to the streets.

(d) Nothing in this Section shall be deemed to prohibit a mortgage or pledge of the System, or any part thereof, for financing purposes or otherwise. Any such mortgage, pledge or lease shall be subject and subordinate to the rights of the County under this Ordinance, the CATV CERTIFICATE ORDINANCE, or applicable law.

(Arlington, Virginia)

V. FRANCHISE TERRITORY. EXTENSION OF SERVICE

A. Franchise Territory

Many cities or counties will be divided into separate areas of operation, with franchises granted to more than one operator. New York City currently has two different operators with franchise grants for different sections of the city. There might also be service areas within the franchised territory, such as a special facility constructed for business customers or hotels. The franchising authority must also determine who within a territory will receive service, particularly when sections of the franchised territory are sparsely populated, and where and when construction will be initiated.

B. Extension of Service

FCC regulations provide that service must be extended "equitably and reasonably in all parts of the community." (Par. 180) The commission has explained that "a plan that would bring cable only to the more affluent parts of a city, ignoring poorer areas, simply could not stand."

In addition, significant construction must be accomplished within one year after a certificate of compliance is issued by the FCC. Energized trunk must be extended to a substantial percentage of the franchise area each year thereafter.

C. Service Areas

In dividing a geographical area into franchise parts, some consideration should also be given to the service needs within the area and across the franchise borders. This problem is considered in Section VI of this document which outlines system design.

D. Checklist

- Establish territorial boundaries for the franchised area.
- Decide when service must be extended to a customer or a portion of the franchise area.
- Set a construction timetable for development of the system.

These examples should be considered along with the examples given in Section VIII on construction timetables.

Example a

Territorial Area Involved

- (a) The franchise is for the present territorial limits of the City and for any area henceforth added thereto during the term of this franchise.
- (b) The grantee shall, within forty-eight (48) months of its acceptance of the franchise, install and make operational in accordance with the provisions of this ordinance and the grantee's application distribution cable along at least 425 miles of streets within the City according to the following schedule: 200 miles by the end of the second year; an addi-

tional 100 miles by the end of the third year; and an additional 125 miles by the end of the fourth year.

(c) Thereafter, the grantee shall extend cable to new subdivisions, simultaneously with electric power and telephone utilities, and to other areas including City blocks, streets, and highways wherever thirty-five (35) percent of the households or commercial establishments, numbering at least twenty (20) within an area requiring total increase of one (1) mile of cable, notwithstanding any requirement to install new poles or provide underground facilities, formally requested the CATV operator, in writing, to do so.

(d) Failure to install cable as set forth in Section 4(b), or to extend cable as set forth in Section 4(c) within three (3) months of such request shall constitute a breach of a condition for which the remedy of Section 6(d) is applicable. Continuing failure to install or extend cable during any subsequent three (3) month period shall constitute a separate breach of a condition for which the remedy of Section 6(d) is applicable.

(proposed ordinance, Wichita Falls, Texas)

Example b

Section XIV. Service to Customers. The company shall construct and operate the system so as to provide service to all parts of the borough having a density of at least fifty (50) residential dwelling units per mile of system. The company may construct and operate its system at its option in areas having a lesser density factor. The system shall be designed for operation twenty-four (24) hours a day and interruption of service for repairs by the company shall be made only at reasonable hours.

(Borough of Beachwood, New Jersey)

VI. SYSTEM DESIGN

The purpose of this section is to look at ways a franchising authority might use the ordinance to require a system designed to reflect the individual requirements of the community. The subsections provide a checklist and at the same time provide information about the FCC rules that will guide the process.

A. Channel Capacity

Channel capacity is set at 20 in the major markets by FCC rule, with variance allowed only with FCC permission. Permission or special relief (waiver) should be sought at the time the system is certified. Markets below the top 100 (or small markets) and those areas without television stations are free to require cable systems in their communities to comply with but not exceed the major market rule. Section 76.251(a)(1) and (2), 47 CFR 76.251(a)(1) and (2) of the commission's rules deal with channel capacity and Section 76.251(b) allows communities outside the major markets to invoke the major market standards.

The rules also provide a formula and requirement for increasing channel capacity when all the available channels are in use. Section 76.251(a)(8) provides that whenever the educational, government, public and lease access cablecasting channels are in use 80 per cent of the weekdays for 80 per cent of the time during any consecutive three-hour period for six consecutive weeks, the system has six months to make a new channel available for any or all of the access cablecasting purposes.

It is also possible that a system will be required to have more than 20 channels from the outset. Section 76.251(a)(2), 47 CFR 76.251(a)(2) provides that for every over-the-air television broadcast signal provided on the system an equal amount of bandwidth must be provided for other uses. For example, if a system carries 11 television broadcast signals, it must have a 22 channel capacity from the outset.

B. Channel Uses

Whether a system is located in a top 100 market, a small market or outside a television market, the rules determine what broadcast signals (television and radio) the system carries. In communities with 3,500 or more subscribers, the cable operator must originate programming (47 CFR 76.20). All systems in the top 100 markets must provide a free governmental channel, an educational channel and a public access channel for cablecasting (47 CFR 76.251). The remaining unused channels must be made available for access leasing with at least one channel giving preference to part-time users (47 CFR 76.251 (a)(3)). As is the case with channel capacity, to enlarge the number of free access channels either a waiver or special relief must be sought from the FCC at the time the system is certified (47 CFR 76.7).

Communities outside the top 100 markets have the option of applying the access requirements to a system but the requirements cannot exceed those of (47 CFR 76.251) of the rules.

A community that develops plans which vary from these requirements should seek an operator who will be able to carry out the plan.

While the operator oversees the administration of all channels, except the governmental channel, the programming and the facilities to be provided will be of significant interest in selecting an applicant. The specific access rules developed by the operator will also aid the franchising authority in determining how the channels will be used.

The franchising authority will want to determine what television broadcast stations will be carried, what origination plans the operator has (including payable) and what facilities will be made available for producing programming on the access channels.

C. Access Programming Facilities

The FCC requires that "minimal equipment and facilities" be made available for public access cablecasting (Section 76.251(a)(4)). The origination rule also requires that an operator have equipment, staff, and facilities for origination cablecasting (Section 76.201(a)). The rules are indefinite about what production equipment or technical staff should exist either for rent or free of charge for access cablecasting.

The operator should be asked to demonstrate what facilities will be available and what programming personnel will help with the equipment. Because it is difficult to determine exactly what specific equipment will be needed and because new "software" is continually being developed, a provision that lists what functions the equipment should perform and where the studios should be offers the best approach.

Checklist

- Require that an operator provide equipment to meet the community's demands for services that are to be developed.
- Have applicants submit rates for use of technical equipment.

- Determine the expected location of studios.

Example a

All cable system franchisees must provide both mobile and stationary equipment to be used by access cablecasters with the aid of a technical and production staff to be provided by the operator. Included should be equipment that can store programs for later showing. In addition a centrally located studio must be made available to all access users on a first-come, first-served basis. Any applicant to operate the system will be expected to demonstrate in its application how it plans to make available the equipment, the studio, and production and technical staff. Applicants will be given preference in the selection process for plans that will most adequately meet these requirements. A full schedule of rates for use of equipment, studio, and technical and production staff must be submitted. If separate rates are planned for mobile facilities these must also be included. Rates may give preference to noncommercial users.

(hypothetical example)

D. Specialized Services—Point to Point Service

Some communities have thought about using one channel or an entire cable for special uses. Schools, banks, and other users also fall into this category. If such a plan has been developed, the ordinance should reflect this use and alert possible operators by setting forth appropriate requirements.

E. Two-Way Provisions and Subscriber Privacy

The FCC requires that a cable system in a top 100 market maintain a plant having technical capacity for nonvoice return communications (Section 76.251 (a)(3)). This means the system must have two-way potential instead of a working two-way system.

If a system wants to experiment with an active two-way system it may. "However," the commission has stated, "we do not believe that franchising authorities should require more than we have provided for in our rule because it is possible that any such requirement will exceed the state of the art or place undue burdens on cable operators in this stage of cable development in the major markets. Where a franchising authority has a plan for actual use of a more sophisticated two-way capability and the cable operator can demonstrate its feasibility both practically and economically we will consider, in the certificating process, allowing such a requirement." (*Memorandum Opinion and Order on Reconsideration*, June 16, 1972, F.C.C. 72-530 par. 79 n. 25.)

Where two-way experiments are planned, consideration is given to the problem of subscriber privacy. In drafting these provisions the franchising authority should consider whether it has the power to enact criminal provisions. The examples below illustrate the initial thinking of at least one group in this area.

3.46 Monitoring. No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion. In no event shall monitoring of any kind take place without a clearly visible light signal and clearly audible sound signal. The light shall be visible and the sound audible at a distance of at least 30 feet from the terminal at the time of monitoring.

3.47 *Prevention.* Each terminal shall be equipped with a switch by which the user can, upon notification by means of the aforementioned light and sound, prevent the monitoring of his terminal notwithstanding any prior agreement.

3.45 *Cable Tapping.* It shall be unlawful to tap or monitor a system line without authorization from the parties whose communication might be overheard. The penalty for each violation of this section shall be a fine up to \$500.00 or imprisonment up to six months or both.

(Coalition for a Fair Cable Television Ordinance
—Chicago, Illinois)

F. Interconnection

The commission is currently considering what standards should be set for interconnection. To some cable operators, interconnection simply means the exchange of programming, to others it means the physical interconnection of systems by microwave or cable. The latter meaning presents the more difficult issue, since communities and operators will have to develop means of planning between areas within a city, a region or perhaps a state. Because of the expense involved and the lack of development of cable systems in all areas the example given is perhaps the best kind of provision at this time.

The Company may be required to interconnect its System with any other broadband communications facility operating in an adjacent territory. Such interconnection shall be made within sixty (60) days of a request made by the City. For good cause shown the Company may request and the Board may grant reasonable extensions of time to comply with the requirements.

(New York City and Arlington, Virginia,
edited version)

G. Underground and Overground Installation Requirements

Sec. 15-87. Underground Installation. In areas of the city having telephone lines and electric utility lines underground, whether required by ordinance or not, all or any CATV permittees' lines, cables and wires shall be underground. It shall be the policy of the city that existing poles for electric and communication purposes be utilized wherever possible, and that underground installation even when not required is preferable to the placing of additional poles.

Sec. 15.88 Construction Standards; Clearances Above Ground. Each CATV permittee's distribution system in the public streets shall comply with all applicable laws, regulations, and ordinances, and all its wires and cables suspended from poles in the streets shall comply with the minimum clearances above ground required for telephone lines, cables, wires and conduits.

(Midland, Michigan)

VII. TECHNICAL PERFORMANCE STANDARDS

The FCC has set technical standards in Subpart K of the rules, but believes that its rules provide only a start. While the FCC expects to refine and expand the standards to meet changes in the state of the art, it has stated that there is "no reason why franchising authorities may not now require more stringent technical standards than

those in Subpart K." A federal advisory committee has also been formed to set general standards.

The FCC's rules should be used as a base for writing other standards. Engineering analysis may be sought to ensure appropriate standards for the franchised area. The following categories provide a description of the technical requirements that should be of concern.

Technical Details

Information should be obtained that includes details of the equipment and cable and the antenna site the system will use. Construction practices and system performance requirements must meet FCC performance standards and recognized utility-type construction procedures.

Received Signal Analysis

Standards for incoming signals should consider their projected quality, site selection, propagation, and interference. Minimum quality for both local and distant signals should be set along with the respective antenna arrays required to ensure at least minimum quality.

Towers

Attention should be given to requirements for the structural adequacy and height of the antenna arrays and tower, including tower lighting, painting, location and design.

Headend

Performance and equipment standards are also necessary for those portions of the system designed to process and transmit TV and FM signals from their source (off-air, local origination, microwave) to the distribution system.

Distribution System

Standards in this area should include all specific design requirements for both the trunk and feeder cable, and performance standards both for trunk and line equipment and picture quality delivered to subscribers. These standards are to ensure that the total system (the headend and distribution systems) provide the grade of service proposed by the applicant.

System Testing

Test conditions and equipment, locations and time intervals for testing, and the measurement procedures should be written as a way to enforce the standards set above.

Proof of Performance

Results of system performance and tests should be submitted periodically to ensure the system's quality, including measurements of signals at the headend and throughout the system, quantitative analysis of all picture quality parameters, and subjective evaluation of picture quality.

VIII. LOCAL REGULATORY FRAMEWORK

A. Procedure For Day-to-Day Regulation

The local franchising authority's role in regulating a cable system goes beyond selecting an applicant; under FCC standards, it must develop a procedure for

considering consumer complaints and passing on requests for rate increases. Moreover, the local franchising authority is the logical body to develop general policy about the development of cable technology in the community. Some communities plan to establish a commission or council to deal with cable regulation.

Example *a* lists a series of functions to be performed by such a council. Its power is largely advisory in matters of applicant selection or rate changes.

Example *b* grants the "agency" continuing regulation. In this case, the designated agency is the county manager.

Both examples look toward consumer problems and service development.

Example a

Cable Television Commission

Before franchises are granted, the City Council shall appoint a commission, to be known as the Cable Television Commission with the following functions:

- a. Advise the Council on applications for franchises.
- b. Advise the Council on matters which might constitute grounds for revocation of the franchise in accordance with this ordinance.
- c. Resolve disagreements among franchisees, subscribers and public and private users of the telecasting facilities; such decisions of the Commission shall be appealable to the City Council.
- d. Advise the Council on the regulation of rates in accordance with this ordinance.
- e. Encourage use of access channels among the widest range of institutions, groups and individuals within the City. This endeavor shall be conducted with a view toward establishing different categories of uses, and the annual reports by the Commission, to the City Council, shall be by such categories, defined as follows:
 1. Off the air network and independent entertainment programs.
 2. Off the air educational programs.
 3. Local educational uses including library, public schools, Lansing Community College, Michigan State University.
 4. For licensee to lease for pay T.V.
 5. For licensee to lease for business uses, including telemetry of information.
 6. Public access channels for local programming under public control with guaranteed access for students and minority groups.
 7. Public Agency channels (including fire, police, burglar alarms, and public announcements).
 8. Information retrieval and professional communication.
- f. Cooperate with other Systems.
- g. Audit all franchisee records required by this ordinance and, in the Commission's discretion, require the preparation and filing of information additional to that required herein.
- h. Make an annual report to the Council including: an account of franchise fees received and distributed, the total number of hours of utilization of public channels, and hourly subtotals of various programming categories, and a review of any plans submitted during the year by franchisees for development of new services.

- i. Conduct periodic evaluations of the System, with the franchisee, and pursuant thereto, make recommendations to the Council for amendments to this ordinance or the franchise agreement.

Cable Television Commission shall consist of seven members representative of the population characteristics and the residents of the City, appointed by the City Council. Each member shall serve a term of five years; provided, however, that appointments to the first Commission, shall be for 1, 2, 3, 4, and 5 year terms respectively. Any vacancy in the office shall be filled by the City Council for the remainder of the term. No employee or person with ownership interest in a cable television franchise granted pursuant to this ordinance shall be eligible for membership on the Commission.

(East Lansing, Michigan, edited draft)

Example b

Day-to-Day Regulation

Day-to-day regulation is assigned to the Agency as defined and determined by the Board. In addition to other responsibilities as may have been heretofore assigned or which may be assigned later, the Agency shall have the following powers:

- a. In cases where customer complaints are unsatisfied by the Company's responses to complaints of service failures, poor service, inferior audio or video signals, the Agency shall have the power and the Company shall accept and give recognition to the Agency's recommended adjustments which may take the form of the following:
 - 1. Require the Company to adjust billing charges for service deficiencies in whole or in part, based upon the Agency's evaluation of the deficiencies and the equities involved.
 - 2. Require the Company to make reasonable refunds.
- b. In cases where requests for service have been ignored or unfilled for whatever reason, the Agency shall have the power to require the Company to provide service in response to all reasonable requests as the Agency may determine based upon its determination of the intent of this Chapter, subject, however, to appeal by the Company to the Board, if, in its opinion, the requests are not "reasonable."

(Arlington, Virginia)

B. Functions to be Regulated

1. CONSTRUCTION TIMETABLES, PROVISION OF SERVICE UPON CONSUMER DEMAND

The FCC has established in Section 76.31(a)(2) general timetables for construction and operation of systems to ensure that franchises do not lie fallow. Under the commission's rules the franchise must require the cable system to accomplish significant construction within one year after it issues a certificate of compliance.

Thereafter, energized trunk cable must be extended to a substantial percentage of the franchise area each year, the percentage determined by the franchise authority. The rules require energized trunk cable to be extended to at least 20 per cent of the franchise area each year, the extension to begin within one year after the commission issues its certificate of compliance.

Checklist

- Establish a year-by-year, area-by-area construction timetable for the extension of service.
- Provide requirements that will allow for the extension of service in wired areas on a nondiscriminatory basis.
- Provide consumer protection against the disruption of service.
- Consider areas that might provide wiring problems because of either high or low density. A service provision might exclude certain areas of low density that would be a hardship to wire.
- Provide for unforeseen events that would cause alteration of the established timetables.
- Weigh priority and free installation of service for such institutions as schools and public buildings.

The examples below exhibit an approach that appears to come within the FCC guidelines, with one exception. The first example fails to set out a year-by-year plan to extend service to a portion of the county each year. Beyond requiring the beginning of wiring and a completion date after five years, there is no device to ensure consistent development. However, Example *a* does ensure that a resident's request for service be met after the system is built. Example *b* meets FCC guidelines and also protects the consumer against disruption of service.

Example a

The company shall commence operation within two (2) years of the effective date of the Certificate. Operations shall be considered commenced with the bona fide retransmission and amplification of television signals on a regular basis to at least 1000 residential subscribers. Upon the reasonable request for service by any person located within the County, the Company shall, within 60 days, furnish the requested service to such person. A request for service shall be unreasonable for the purpose of this subdivision, if occurring within five (5) years from the effective date of the Certificate and no trunk line installation capable of servicing that person's block has as yet been installed, or, if occurring at any time and direct access cannot be obtained to such person's premises and all other means of access are highly impracticable.

(Arlington County, Virginia)

Example b

- (1) In the event its service to any subscriber is interrupted for twenty-four or more consecutive hours, it will grant such subscriber a pro rata credit or rebate.
- (m) The area or areas to be served as set out in the license according to subsection (a) of section three shall annually be wired and provided service in not less than ten per cent of the area or areas specified until said service is completed and available in said area or area in compliance with the provisions of subsection (n).

- (n) The completion of construction within six years after the license is granted under the provisions of this chapter.

(Massachusetts State Cable Act)

2. REGULATION OF SPECIALIZED SERVICES

Specialized services are those which might be provided to a limited number of customers either because of their special needs or the necessity to test or experiment before providing the service to all subscribers.

A specialized service might provide interaction with a central computer, regulate the flow of traffic or provide limited two-way communication. An ordinance that is too limited in the functions a cable operator may perform will discourage experimentation and limit full development of the technology. However, experiments present the possibility of arbitrary establishment of rates with the additional possibility of subsidy. The ordinance should strive to both encourage the system's development and protect the consumer. The example below offers one possible solution.

Example a

Any cable system franchisee must obtain a permit from the Cable Commission to provide a discrete service that will not be available to all subscribers. All requests shall demonstrate that the service is in the public interest and will not affect the system's ability to deliver services to other users and subscribers.

(hypothetical example)

3. MAINTENANCE AND ALTERATION OF THE SYSTEM AFTER CONSTRUCTION

Technical improvement of the system during a long franchise period is often tied to a "state-of-the-art" clause. The term "state-of-the-art" is vague and usually left unenforceable, because provisions cannot predict the future implications technical development might have on such matters as current service, community needs, and the ability of an individual operator to make the change. To deal with these unknowns the best a franchising authority can do is to provide a procedure to consider changes. The example below from New York City is a good beginning and provides a procedural basis for making changes that consider both the consumer and the system operator. A cable commission might perform the same function as New York's Director of Franchises. The required changes may involve different expenditures, so that those responsible for technical review must not only be familiar with the development of the technology but will need to weigh its necessity.

The cable operator should also be expected to make annual reports about the technical status of the system to those responsible for regulation.

FCC regulations provide that when the commission modifies technical standards the changes must be incorporated into the franchise within one year or at renewal time, whichever occurs first (Section 76.31(a)(6)). The ordinance could provide that changes in technical requirements be effectuated as the FCC changes its rules; however, those rules may continue to lag technically as they now do.

The best method is undoubtedly to adopt a procedure that will allow change. For example, the city might use an advisory panel of technical personnel familiar with cable or allow decisions to be reviewed by the city council.

Technical maintenance of signal quality should be tied to the technical standards in Section VII of this outline, and enforced through periodic reports and commission review.

Checklist

- Provide a procedure and standard establishing a time for reviewing technical changes in the system during the franchise period.
- Provide a procedure and reporting system to assess whether the system is maintaining required technical standards.
- Ensure that those responsible for technical review have access to expert technical assistance.

Example a

After consultation with the Director of Communications, if the Director of Franchises determines, giving due regard to technological limitations, that any part or all of the System should be improved or upgraded (including, without limitation, the increasing of channel capacity, the furnishing of improved converters, and the institution of two-way transmission), he may order such improvement or upgrading of the System, to be effected by the Company within a reasonable time thereafter. If the Company disputes any such determination or the reasonable time within which it is to be implemented, it may, within twenty (20) days after the issuance of such order, demand that the matter be arbitrated pursuant to Section 20 of this contract.

Section 20 Arbitration

Matters which are expressly made arbitrable under provisions of this contract shall be determined by a panel of three arbitrators appointed by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York for the First Judicial Department. The fees of the arbitrators, shall be fixed by the said Presiding Justice. The expenses of the arbitration, including the fees of the arbitrators, shall be borne by the parties in such manner as the arbitrators provide in their award, but in no event will the City be obligated for more than half the expenses. The determination of a majority of the arbitrators shall be binding on the parties. In the event that an arbitrable matter arises contemporaneously under another franchise, involving the same issue as that to be arbitrated under this franchise, the Company will not claim or assert that it is prejudiced by, or otherwise seek to prevent or hinder, the presentation of the arbitrable matter under such other franchise for determination by a single panel.

(New York City)

4. RATES

The FCC's rules (Section 76.31 (a)(4) require that the franchising authority specify or approve the initial rates which the franchisee charges subscribers for installation of equipment and regular subscriber services. Changes in these rates can only be authorized by the franchising authority after an appropriate public proceeding affording due process. The rule is not clear, however, as to what other rates the franchising authority should consider. The city should specifi-

cally reserve the right to review subscriber rates and rates for users of leased channels.

The cost of providing service to certain users, such as the elderly, at reduced rates should also be considered. The ordinance should set forth any preferential or subsidized rates and ways to distribute them. It should also determine if a subsidy should be financed through the system or from some other budget and how drawing on other subscribers will affect their rates.

Clearly some rates for services—those which are monopolistic in character—should be regulated, while others which face competition should be allowed to result from incremental costing. For example, burglar alarm systems offered on the cable can be obtained from other sources. These should return their incremental costs but not be limited in the prices they charge customers. Other services such as leasing channels for users are clearly monopolistic; their rates should be considered by the franchising body.

Because the establishment and review of rates is a function that will continue throughout the life of the franchise, someone will have to accept the responsibility of performing the necessary economic analysis. In addition, the procedure should allow for review upon petition of the user, subscriber, or operator and establish a systematic periodic review.

Once a procedure has been developed for considering rate changes, the proposed changes are to be measured against the standard of what is fair to the system and to the subscribing public, a matter which the commission sees as dependent on the particular facts of each situation. The authority responsible for setting rates will need to identify conflicting factors that require balancing in each case. Initially, a rate authorized for subscriber services should reflect two factors that will be altered in any given situation: (1) the amount and cost of capital which acknowledges that cable is a capital intensive industry and (2) the fact that rates which are too high will affect the number of subscribers, the base for the development of additional services. The object is to attract capital and secure a high penetration or subscriber rate. To test the practicality of the balance it has established a city might test its rates with one of the financial models used by groups that supply advice and information about cable.

A franchising authority must also consider terminal connection fees as an initial matter, and take note of density and overground and underground wiring costs. The authority should also consider reconnection and multiple outlet fees.

Checklist

- Ensure that rates are fair to subscribers and to the operator considering, among other things, the effect of rates on the raising of developmental capital and on penetration.
- Consider subscriber rate subsidies for special groups.
- Require applicants for the franchise to demonstrate what rates will be charged to subscribers and users for all planned services.
- Provide a procedure that will allow public input, periodic review, interested party petitions, and have the capability of economic analysis.

Example a

1.1 The Cable Commission provided for in this act will review all noncompetitive user and subscriber rates for services provided by a cable system within the franchised area. The Commission will estab-

lish rates on the basis of what will be fair to the consumer and fair to the system operator. The Commission may also consider other factors relevant to the public interest.

1.2 All applicants for a franchise shall submit a full listing of their terminal connection rates, subscriber and user service rates. Rates should be justified according to the standards of Section 1.1. Thereafter, an annual report to be prescribed by the Cable Commission shall be filed on April 1 of each year. The Commission shall within sixty days report to the Council on the status of the rates.

1.3 Within sixty days after the Commission reviews any consumer or operator request for a change of a rate act as follows provided herein: The Commission shall within ten days of a filing give notice to the general public between the hours of 7 and 9 PM for five consecutive days on at least two channels of the cable system for which a rate filing has been made. Written comments may be filed by interested parties within 30 days from the final date of notice. A reply to the comments may be filed within 15 days.

(hypothetical example)

Example b

Subject to determination and and adjustment by the Commission from time to time to assure a fair rate structure and a fair rate of return to the Grantee based upon the the most economical and efficient operation, the Grantee may charge subscribers for Basic Service over the CATV system not more than the following amounts for the first two years of the franchise agreement.

- a. Single Family Dwelling Units and Multiple Dwelling Unit Buildings not more than three stories high:
 - \$ 5.25 per month for first service outlet
 - .75 per month for each additional outlet
 - 10.00 installation charge for the first outlet on each floor
- b. Multiple Dwelling Unit Buildings over three stories high, Hotels, Motels, Industrial and Buildings:
 - \$ 5.25 per month per dwelling unit, or office or department in one location on one floor for first service outlet
 - 1.00 per month for each additional outlet in each dwelling unit, office or department in one location on one floor
 - 10.00 installation charge for the first outlet on each floor
- c. Government Buildings, Schools, Hospitals and Libraries:
 - Free service and outlets, no installation charges.

An additional sum, not exceeding \$.75 per month may be collected from subscribers by the Grantee with the approval of the Commission to be promptly given to and held in trust by the Commission, as trustee, to be disbursed by the Commission for research and development of the public service uses of CATV and the programming, production and promotion of public service CATV.

Example c

The following rates and charges are hereby fixed as the maximum monthly net rates and charges and are hereby authorized for the

furnishing of community antenna television service in the City of Bay City to be applied and used by Clive Runnells, d/b/a Bay City T.V. Cable Company, his heirs or assigns (the Company), as follows, to-wit:

- a. Not to exceed \$25.00 in advance for the original installation to each individual or consumer, plus \$5.00 for additional installations to each individual or consumer, except as provided for in Section IX, paragraph (b) of the franchise granted to the Company.
- b. Not to exceed \$6.00 in advance per month for the first outlet in a dwelling or business unit, and not to exceed \$1.50 per month for each additional outlet in a home or place of business. This charge shall include all channels furnished on the Company's community antenna television system and nothing herein shall be construed as authorizing any additional charge for individual programs, or any additional monthly or other periodic charge to see certain programs.

The Company may discontinue service to consumer upon failure to pay bill within 30 days of rendition.

The Company shall establish and post in its office, rate schedules providing monthly billing rates complying with Section 1 of this ordinance and may, in addition, establish special contract rate schedules for large volume commercial or industrial use providing other rates and charges.

(Bay City, Texas)

Example d

The Board may at any time increase or decrease any rate, require discontinuance of any scheduled service, or revise or delete any term or condition applicable thereto upon a determination, made after a public hearing following notice to the Company, that a particular rate, service or term or condition (1) explicitly or implicitly violates this contract.

The Board may reduce rates for Basic Service at any time after five (5) years from the effective date of this contract and rates for Additional Service after eight (8) years from the effective date of this contract upon a determination, made after a public hearing following notice to the Company, that such rates or a particular rate can be reduced without impairing the ability of the Company to render service and derive a reasonable profit therefrom.

(New York City)

Example e

Prohibition of Discriminatory or Preferential Practices.

The franchisee shall not, in its rates or charges, or in making available the services or facilities of its System, or in its rules or regulations, or in any other respect, make or grant preference or advantages to any subscriber or potential subscriber to the System, or to any User or potential User of the System; and shall not subject any such persons to any prejudice or disadvantage. This provision shall not be deemed

to prohibit promotional campaigns to stimulate subscriptions to the System or other legitimate uses thereof.

Public Service Installations. The franchisee shall, without charge for installation, maintenance, or service, make single installations of its standard community antenna service facilities at each fire and police station, public and private school (K-12) within the City. The franchisee shall, without charge for installation, maintenance, or service, make single installations of its standard community antenna services to the City Hall and the public library. Five such installations shall be provided to buildings on the campus of Michigan State University. Such installations shall be made at such reasonable locations as shall be requested by the respective units of government or educational institutions. Any charge for relocation of such installations shall be made at such reasonable locations as shall be requested by the respective units of government or educational institutions. Any charge for relocation of such installation at the same location may be made at cost plus 10%. No monthly service charges shall be made for distribution of the franchisees signals within such publicly owned buildings.

(East Lansing, Michigan, draft)

5. FRANCHISE FEES

The FCC rule provides as follows:

Section 76.31(b) The franchise fee shall be reasonable (e.g., in the range of 3-5 percent of the franchisee's gross subscriber revenues per year from cable television operations in the community (including all forms of consideration, such as initial lump sum payments)). If the franchise fee exceeds three percent of such revenues, the cable television system shall not receive Commission certification until the reasonableness of the fee is approved by the Commission on showings, by the franchisee, that it will not interfere with the effectuation of federal regulatory goals in the field of cable television, and by the franchising authority, that it is appropriate in light of the planned local regulatory program. The provisions of this paragraph shall not be effective with respect to a cable television system that was in operation prior to March 31, 1972, until the end of a system's current franchise period, or March 31, 1977, whichever occurs first.

The commission discussion of the rule states:

185. Franchise Fee While we have decided against adopting a two percent limitation on franchise fees, we believe some provision is necessary to insure reasonableness in this respect. First, many local authorities appear to have exacted high franchise fees more for revenue-raising than for regulatory purposes. Most fees are about five or six percent, but some have been known to run as high as 36 percent. The ultimate effect of any revenue-raising fee is to levy an indirect and regressive tax on cable subscribers. Second, and of great importance to the Commission, high local franchise fees may burden cable television to the extent that it will be unable to carry out its

part in our national communications policy.¹ Finally, cable systems are subject to substantial obligations under our new rules and may soon be subject to congressionally-imposed copyright payments. We are seeking to strike a balance that permits the achievement of federal goals and at the same time allows adequate revenues to defray the costs of local regulation.

186. The Commission imposes an annual fee of 30 cents per subscriber to help finance its own cable regulatory program. Assuming average annual revenues to the cable system of 60 dollars per subscriber, the Commission's fee amounts to one-half of one percent of a system's gross receipts. The regulatory program to be carried out by local entities is different in scope and may vary from jurisdiction to jurisdiction. It is our judgment that maximum franchise fees should be between three and five percent of gross subscriber revenues. But we believe it more appropriate to specify this percentage range as a general standard, for specific local application. When the fee is in excess of three percent (including all forms of consideration, such as initial lump sum payments), the franchising authority is required to submit a showing that the specified fee is appropriate in light of the planned local regulatory program, and the franchisee must demonstrate that the fee will not interfere with its ability to meet the obligations imposed by our rules.

Any provision should reflect this rule and allow for flexible adjustment to meet increases in maintaining the regulatory program.

6. EMPLOYMENT REQUIREMENTS

The cable system operator must, at the time of certification, file the system's equal employment opportunity program pursuant to FCC rule Section 76.13 (a)(8), included here because it is not with the other rules enacted by the commission. A cable operator must establish an affirmative plan to employ minorities and women. Section 76.311 says:

Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 76 - Cable Television Service

1. In 76.13, subparagraph (a)(8) is added, to read as follows:

§ 76.13 *Filing of applications*

* * *

(a) * * *

(8) A statement of the proposed system's equal employment opportunity program, as described in § 76.311. However, if the operator of the proposed system believes that the system will (continuously during January, February and March of the year following commencement of operations) satisfy the conditions in § 76.311(c)(1)(i)(b), he may submit a statement justifying that con-

¹ We have from time to time stated our concern with the threat of other inhibiting factors. Cable television is also involved, for example, in a dispute over utility pole attachment rates and faces the burdening claims of the telephone and electric power industries that rental charges be increased. We are currently inquiring into pole rental practices (Docket 16928) and expect to address the question of what regulatory controls may appropriately be invoked.

clusion in lieu of a statement of the proposed system's equal employment opportunity program.

* * *

2. In § 76.305, paragraph (f) is added, to read as follows:

§ 76.305 *Logging and record-keeping requirements.*

* * *

(f) *Equal employment opportunities.* See § 76.311(f).

3. § 76.311 is added, to read as follows:

§ 76.311 *Equal employment opportunities.*

The following provisions apply to all operators of cable television systems, both in that capacity and as licensees or permittees of cable television relay stations. Where a cable system or a headquarters office has employees whose duties are related to the operation of a cable television relay station, these employees shall be considered employees of the cable system or headquarters office employment unit for purposes of this section.

(a) *General policy.* Equal opportunity in employment shall be afforded by all operators of cable television systems to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin, or sex.

(b) *Equal employment opportunity program.* (1) Each cable television system shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of system employment policy and practice.

(2) Under the terms of its program a system shall:

(i) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(ii) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(iii) Communicate the system's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(iv) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, or sex from the system's personnel policies and practices and working conditions;

(v) Conduct continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to assure genuine equality of

opportunity to participate fully in all organizational units, occupations, and levels of responsibility in the system.

(3) Where two or more cable television systems under common ownership or control are so interrelated in their management, operations, and utilization of employees as to constitute a single employment unit, the program shall be jointly established, maintained, and carried out by them. (Under other circumstances, the term "single employment unit" refers to an individual cable television system or to a headquarters office.)

(c) *Additional information to be furnished to the Commission.*

(1) *Equal employment programs to be filed by operators of systems.*

(i) The operator of each cable television system shall file a statement of its equal employment opportunity program not later than June 30, 1972, indicating specific practices to be followed in order to assure equal employment opportunity for females, Negroes, Orientals, American Indians, and Spanish-surnamed Americans in such aspects of employment practices as recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination.

(a) Any changes or amendments to existing programs shall be filed with the Commission on or before May 31 of each year thereafter.

(b) If the system (1) has fewer than 5 full-time employees, and (2) does not (within the meaning of paragraph (b)(3)) together with other cable television systems constitute a single employment unit with an aggregate total of 5 or more full-time employees, an equal employment opportunity program statement need not be filed for the employment unit which consists of or includes the system.

(c)(1) Where, pursuant to paragraph (b)(3), a program is jointly established by two or more cable systems with an aggregate total of 5 or more full-time employees, a multiple cable operator shall file a combined statement. (2) A multiple cable operator shall file a separate equal employment opportunity program statement for each headquarters office if that office has 5 or more fulltime employees, and its work is primarily related to the operation of more than one cable television system under common ownership or control.

(d) If, pursuant to paragraph (c)(1)(i)(b) of this section or § 76.13(a)(8), a cable operator has been exempted from the requirement that it file an equal employment opportunity program statement, but has failed to satisfy the conditions of that exemption at any time during the first three months of a calendar year, it shall file the statement on or before May 31 of that year.

(2) *Contents of the equal employment program statement.* The program should reasonably address itself to such

specific areas as set forth below, to the extent that they are appropriate in terms of employment unit size, location, etc.

(i) *To assure nondiscrimination in employment:*

(a) Posting notices in the cable operator's offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system are Spanish-surnamed Americans, such notice should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices where appropriate;

(b) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion, or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against;

(c) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(d) Recruiting through schools and colleges with significant minority-group enrollments;

(e) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants;

(f) Encouraging present employees to refer minority or female applicants;

(g) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the cable operator hires.

(ii) *To assure nondiscrimination in selection and hiring:*

(a) Instructing personally those on the staff of the system who make hiring decisions that all applicants for all jobs are to be considered without discrimination;

(b) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or re-negotiated union agreements;

(c) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iii) *To assure nondiscriminatory placement and promotion:*

(a) Instructing personally those of the system's staff who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(b) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower-paid employees with respect to any of the higher-paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(c) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect;

(d) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iv) *To assure nondiscrimination in other areas of employment practices:*

(a) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found;

(b) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority group or female employees.

(d) *Report of complaints filed against operators of systems.*

(1) All operators of cable television systems shall submit an annual report to the Commission no later than May 31 of each year indicating whether any complaints regarding violations by the operator of equal employment provisions of Federal, State, Territorial, or local law have been filed before any body having competent jurisdiction.

(i) The report shall state with respect to each such complaint: the parties involved, the date filed, the courts or agencies before which the matter has been heard, the appropriate file number (if any), and the respective disposition or current status of the complaint.

(ii) Any cable operator who has filed such information with the Equal Employment Opportunity Commission need not do so with the Federal Communications Commission, if such previous filing is indicated.

(e) *Report of annual employment.* (1) Each operator of a cable television system with 5 or more full-time employees (including those whose duties are related to the operation of a cable television relay station shall file with the Commission, on or before May 31 of each year, on FCC Form 395, an annual employment report.

(2)(i) Where pursuant to paragraph (b)(3), an equal employment opportunity program is jointly established by two or more cable television systems with an aggregate total of 5 or more full-time employees, a combined (single employment unit) annual employment report shall be filed.

(ii) A multiple cable operator shall file a separate annual employment report for each headquarters office if that office has 5 or more full-time employees and its work is primarily related to the operation of more than one cable television system under common ownership or control.

(iii) Where, pursuant to paragraph (e)(2)(i) and (ii), if more than one annual employment report is filed with respect to (a) cable television systems under common ownership or control, or (b) headquarters offices performing work related to such systems, a multiple cable operator shall also file a consolidated report, covering all system and headquarters office employees included in those reports.

(3) The data contained in each annual employment report required by subparagraphs (1) and (2)(i) and (ii) of this paragraph shall reflect the figures from any one payroll period in January, February, or March of the year during which the report is filed. The same payroll period should be used in each year's annual employment report.

(4) Annual employment reports required by this paragraph shall be filed on or before May 31 of each year.

(f) *Records available to the public.*

(1) *Commission Records.* A copy of every annual employment report, equal employment opportunity program, and reports on complaints regarding violation of equal employment provisions of Federal, State, Territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the cable operator and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(2) *Records to be maintained locally for public inspection by operators.*

(i) *Records to be maintained:* Each operator of a cable television system required to file annual employment reports, equal employment opportunity programs, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, Territorial, or local law shall maintain, for public inspection, a file containing a copy of each such report and copies of

all exhibits, letters, and other documents filed as part thereto, all correspondence between the cable operator and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference. An employer who is required to file a consolidated annual employment report shall maintain an adequately indexed consolidated equal opportunity file, containing copies of all the material included in the equal employment opportunity files of the headquarters offices and other employment units reported upon in his consolidated annual employment report.

(ii) *Period of retention:* The documents specified in paragraph (f)(2)(i) of this section shall be maintained for a period of five years.

(iii) *Where maintained:* The equal employment opportunity file for a system (or a single employment unit including that system) shall be maintained at the principal work-place of the employment unit, or at any accessible location (such as a public registry for documents or an attorney's office) in the principal community served by the employment unit. The headquarters office equal employment opportunity file and the consolidated equal employment opportunity file shall be maintained (a) respectively, at the headquarters office and the principal office of the employer, or (b) at any accessible place (such as a public registry for documents or an attorney's office) in the community in which the office is located. The employer shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

4. § 76.409 is added, to read as follows:

§ 76.409 *Annual employment report.*

An "Annual Employment Report" (FCC Form 395) shall be filed with the Commission for each cable television system, as defined in § 76.5, on or before May 31 of each year, in accordance with the provisions of § 76.311.

B. Part 78—Cable Television Relay Service.

1. § 78.75 is added to read as follows:

§ 78.75 *Equal employment opportunities.*

See Section 76.311 of this chapter.

7. CONSUMER COMPLAINTS

The FCC's rules require that franchises provide for the investigation and resolution of local service complaints and that the franchisee maintain a local business office or agent for these purposes.

The examples given in Part A of this section supply a procedure for regulation through governmental monitoring and review of consumer complaints. All applicants should expect to delineate the procedures and personnel which will be available for handling consumer matters. In addition, the franchising authority should consider a reporting system to keep itself informed about the system. Some ordinances also require that operators keep records of complaints and make them available to the franchising authority upon request.

Checklist

- Give a commission or employee of the franchising authority responsibility for reviewing consumer complaints and the franchisee's procedure for handling them.
- Establish a procedure for the franchisee to report to the authority about complaints.
- Set up a process for a commission or employee to review complaints made to the city by consumers.

While this example provides no reporting system, it sets forth a good method for reviewing complaints made directly to the authority.

Example a

Section 10. Complaints by any person as to the operation of any CATV system may be filed in writing with the commission or with the issuing authority, each of which shall within ten days forward copies of such complaints to the other. The issuing authority and the commission shall be notified by the licensee on forms to be prescribed by the commission not less than every three months of the complaints of subscribers received during the reporting period and the manner in which they have been met, including the time required to make any necessary repairs or adjustments.

(Massachusetts Cable Act)

8. USE OF STREETS, POLE ATTACHMENTS

Example a

Section 19. Conditions on Street Occupancy

(a) All transmission and distribution structures, lines, and equipment erected by the grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said street, alleys, or other public ways and places.

(b) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(c) If at any time during the period of the franchise the city shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the grantee, upon reasonable notice by the city shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(d) Any poles or other fixtures placed in any public way by the grantee shall be placed in such manner as to comply with all requirements of the City.

(e) The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its

wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(f) The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

(g) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

(h) The grantee shall provide plans and specifications for all construction within City streets, alleys, or other public ways and places to the Directors of Public Works and Traffic for their review at least 30 days prior to the start of construction. The approval of both departments shall be necessary before construction commences. This provision shall apply to each construction sequence if the construction is accomplished in phases.

(East Lansing, Michigan, draft)

Section 20. Erection, Removal and Common Uses of Poles

(a) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the Board with regard to location, height, type, and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the Board determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the grantee, but it does not make arrangements for such use, the Board may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(c) Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of the grantee, but agreement therefore with the grantee cannot be reached, the Board may require the grantee to permit such use for such consideration and upon such terms as the Board shall determine to be just and reasonable, if the Board determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

(East Lansing, Michigan, draft)

C. Method for Resolving Disputes

Because many changes in the service obligations of a system during the term of an ordinance must be left to a balancing of equities, some ordinances establish a means of resolving disputes through arbitration. The example below and the one in Section VII (B)(2) of this outline are typical.

Example a

Matters which are expressly made arbitrable under provisions of a franchise issued pursuant to this Act shall be determined by a panel of three arbitrators, one to be appointed by the Company, one by the County Executive, and one to be selected by the two arbitrators. The fees of the arbitrators shall be fixed by the County Council. The expenses of the arbitration, including the fees of the arbitrators shall be borne by the parties in such a manner as the arbitrators provide in their award but in no event will Howard County be obligated for more than half the expense. The determination of a majority of the arbitrators shall be binding on the parties. In the event that an arbitrable matter arises contemporaneously under another franchise, involving the same issue as that to be arbitrated under a franchise granted pursuant to this Act, the Grantee shall not claim or assert that it is prejudiced by or otherwise to seek to prevent or hinder, the presentation of the arbitrable matter under such other franchise for determination by a single panel.

(Howard County, Maryland)

D. Records and Reports, Notice of Documents Filed With Agencies

The local regulatory program is greatly aided if the cable operator files copies of FCC filings and reports with the franchising authority. While this annotated outline periodically makes reference to the different kinds of reports a system operator must file, this subsection groups all reports together.

A cable operator, when the system is certified pursuant to Section 76.13, must file copies of the application with the franchising authority. In addition, the operator must file an annual financial report with the commission on April 1 each year (FCC Form 326 (See Section 76.504) a general report on the system on March 1 each year for the preceding year (FCC Form 325 (See Section 76.405)), and a computation of the annual fee to be paid to the federal government on April 1 (Form 326A (See Section 76.406)).

Cable operators must also keep logs and records pursuant to Section 76.305 of the FCC's rules. If the system is located within a major market a record must be kept of all television broadcast signals carried. The TV signal record must include the call letters and location of each station whose signals are carried, the date and specific starting time and ending time of such carriage, and the names of programs scheduled to be carried. The record must be retained for two years.

Other records to be kept include origination cablecasts by candidates for public office (76.205(c)); public access channel rules and a list of uses (76.251(a)(11)); and lease access channel rules and a list of users (76.25(a)(11)). A system must also carry out technical performance tests each year to establish conformance with the technical rules of Subpart K. The test results must be kept on file for five years and be made available to commission personnel upon demand (see Section 76.601).

A local regulatory program might use these records as a base for an annual review of the system. The example below contains a comprehensive list of the

items that should be part of a reporting system. It might be better to obtain the data about the same time as the FCC for ease of preparation.

Example a

Sec. 41-11. Reports.

(a) Within nine (9) months from the effective date of its Certificate, the Company shall submit to the Board a plan of the entire County indicating the date on which the Company expects the installation of the System to be completed and available for service to subscribers in the various areas of the County.

(b) The Company shall furnish the Agency with progress reports indicating in detail the area of construction of the System. Such periodic reports shall be furnished at six (6) month intervals, the first report to be made one (1) year from the effective date of the Certificate.

(c) On or before each of the dates on which payments are to be made, pursuant to 11-75 of the Arlington County Code, and within sixty (60) days after the expiration or cancellation of its Certificate, and at such other times as the Board or Agency shall designate, the Company shall furnish and deliver to the Board or Agency verified or certified reports of its business and operations hereunder and gross receipts derived from all sources in such form and in such detail as the Board or Agency may prescribe.

(d) Within five (5) days after the Company, its affiliates and/or subsidiaries have filed a report, petition, or communication with any City, State or Federal agency pertaining to any aspect of operations hereunder or the financial arrangements therefore, it shall file a copy of such report, petition or communication with the Board.

(e) The Company shall submit a certified annual report to the Board not later than March 31 in each year, for the calendar year ended December 31, next preceding. At any other time, upon request of the Board, the Company shall submit any further information in regard to the business of the Company as may be required by the Board.

(f) For the purpose of the County's evaluation of the operation of the Additional Channels, the Company shall file monthly with the Board and Agency a report or log describing the use being made, and the users, of such channels.

Sec. 41-12. Books and Records of the Company.

(a) The Company shall maintain its principal office in the County for so long as it continues to operate the System or any portion thereof and hereby designates such office as the place where all notices, directions, orders, and requests may be served or delivered under this ordinance. The Board shall be notified of the location of such office or any change thereof.

(b) The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with its Certificate. All such books of accounts and records shall be maintained at the Company's office in the County.

(c) The Board or its officially designated representatives, shall have

access to all books of account and records of the Company for the purpose of ascertaining the correctness of any and all reports and may examine its officers and employees under oath in respect thereto. Access shall be given to such representatives, upon request, to all supplementary financial and engineering records.

(d) Any false entry in the books of account or records of the Company, or false statement in the reports to the Board or its officially designated representatives as to a material fact, knowingly made by the Company, shall constitute a violation of a material provision of this Ordinance.

(Arlington, Virginia)

Example b

Maps, Plats, and Reports. The franchisee shall file with the City Clerk true and accurate maps or plats of all existing and proposed installations. The franchisee shall file annually with the City Clerk not later than sixty (60) days after the end of the franchisee's fiscal year, a copy of its report to its stockholders (if it prepares such a report), an income statement applicable to its operations during the preceding twelve (12) months period, a balance sheet, and a statement of its properties devoted to CATV operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. These reports shall be prepared or approved by a certified public accountant and there shall be submitted along with them such other reasonable information as the City Council shall request with respect to the franchisee's properties and expenses related to its CATV operations within the City. The franchisee shall keep on file with the City Clerk a current list of its shareholders and bondholders.

(edited version of the East Lansing, Michigan draft)

E. Sanctions, Penalties, Enforcement

One of the most neglected areas in ordinances has been enforcement. Mechanisms such as arbitration, provision for leaseback, and the ability to seek court action will aid in achieving the type of cable system the community wants (see Section IV for lease-back provisions).

The powers given to the cable commission, listed in Part A of Section VIII of this outline, serve as a basis to begin planning an enforcement program. A community might also provide for a hearing upon noncompliance, with the remedy a reduction in the franchise period. The following example for a security fund and fine system uses the funds held in security to pay the fine. There is also provision for arbitration, not repeated here, and a cancellation and expiration clause.

Sec. 41-14. Security Fund.

(a) Within thirty (30) days after the effective date of its certificate, the Company shall deposit with the Treasurer of Arlington County and maintain on deposit through the term of its Certificate, the sum of twenty thousand dollars (\$20,000) in cash and in addition shall post a performance bond in favor of Arlington County in the amount of eighty thousand dollars (\$80,000), as security for the faithful performance by it of all the provisions of this Ordinance, and compliance with all orders, permits and directions of any agency of the County having jurisdiction over its acts or defaults under this Ordinance, and

the payment by the Company of any claims, liens and taxes due the County which arise by reason of the construction, operation or maintenance of the System. The bond shall be in the form of such surety as may be approved by the Commonwealth's Attorney for Arlington County.

(b) Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund deposited pursuant to subdivision (a) of this section, the Company shall pay to, or deposit with, the Treasurer of Arlington County a sum of money sufficient to restore such security fund to the original amount of twenty thousand dollars (\$20,000).

(c) If the Company fails to pay to the County any compensation within the time fixed herein; or, fails, after ten (10) days notice to pay to the County any taxes due and unpaid; or fails to repay to the County within such ten (10) days, any damages, costs or expenses which the County shall be compelled to pay by reason of any act or default of the Company in connection with this Ordinance or its Certificate, or, fails, after three (3) days notice by the Agency of such failure to comply with any provision of this Ordinance or its Certificate which the Agency reasonably determines can be remedied by an expenditure of the security, the Treasurer may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Treasurer shall notify the Company of the amount and date thereof.

(d) The cash deposit and the performance bond posted pursuant to § 41-14(a) shall become the property of the County in the event that the Certificate is cancelled by reason of the default of the Company. Upon Application to, and affirmative finding by, the Board, the Company shall be entitled to the return of the performance bond upon the Company's compliance with § 14-4(c). The cash deposit shall be retained by the County and returned to the Company at the expiration of the Certificate provided there is then no outstanding default on the part of the Company.

(e) The rights reserved to the County with respect to the security fund are in addition to all other rights of the County, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the County may have.

Sec. 41-20. Penalties.

For violation of material provisions of this Ordinance penalties shall be chargeable to the Security Fund (§ 41-14), as follows:

- (a) For failure to submit plans indicating expected dates of installation of various parts of the System, § 41-11(a) \$100 per day
- (b) For failure to commence operations in accordance with § 41-5 \$200 per day
- (c) For failure to complete construction and installation of System in accordance with § 41-4(c) \$500 per day
- (d) For failure to supply data requested by Board or Agency in

connection with installation, construction, customers, finances or financial reports, or rate review in accordance with §41-7, 11, 12, 21 \$50 per day

(e) For persistent failure to comply with reasonable recommendations of the Agency relating to rates or services as provided for in §41-21; and/or interconnections, subdistricting, as provided in §41-4(d) and (e), and such other reasonable requests or recommendations as may be made pursuant to authority granted by this ordinance . . . \$50 per day

(f) For failure to restore the cash deposit as required in §41-14(b) within the specified thirty (30) days, the entire cash deposit remaining (if any), and the full amount of the performance bond shall be forfeited.

In cases where the Company disagrees as to whether the requests which have been disregarded are "reasonable" appeal may be made to the Board.

Section 41-22. Cancellation and Expiration.

(a) The Board shall have the right to cancel the Certificate if the Company fails to comply with any material and substantial provision of this Ordinance or of the grant of the Certificate, or any reasonable order, direction or permit issued by any County agency pursuant to such material and substantial provision, or any rule or regulation promulgated by the Board which is reasonable in light of, and consistent with, any provision of this Ordinance or the Company's Certificate; or if the Company persistently fails to comply with any provision of either, or any reasonable order, direction or permit issued by any County agency pursuant to any provision. Such cancellation shall be by resolution of the Board duly adopted in accordance with the following procedures:

(1) The Agency shall notify the Company of the alleged failure or persistent failure of compliance and give the Company a reasonable opportunity to correct such failure or persistent failure or to present facts and argument in refutation of the alleged failure or persistent failure.

(2) If the Agency then concludes that there is a basis for cancellation of the Certificate pursuant to this subdivision (a), it shall notify the Company thereof.

(3) If within a reasonable time the Company does not remedy and/or put an end to the alleged failure or persistent failure, the Board, after a public hearing on notice, may cancel the Certificate if it determines that such action is warranted under this subdivision(a).

(b) If for ten (10) consecutive days the System, or any part thereof, is inoperative, or if the same is inoperative for thirty (30) days out of any consecutive twelve (12) months, the Board may cancel the certificate.

(c) The Company shall not be declared in default or be subject to any sanction under any provision of this Ordinance or the Certificate in any case in which the performance of any such provision is prevented for reasons beyond its control.

(d) If all or part of the streets within the County are closed or discontinued as provided by statute, then the Certificate, and all rights and privileges hereunder with respect to said streets or any part thereof so closed or discontinued, shall cease and determine upon the date of the adoption of the map closing and discontinuing such streets, and the Company shall not be entitled to damages from the County due to the closing or discontinuance of such streets or for injury to any part of the System in the streets or for the removal or relocation of the same.

(e) If the System is taken or condemned pursuant to law, the Certificate shall, at the option of the Board, cease and determine on the date of the vesting title pursuant to such taking or condemnation, and any award to the Company in connection with such taking or condemnation shall not include any valuation based on the Certificate.

(f) Upon cancellation or expiration of the Certificate, the County shall have the right to purchase the System in accordance with subdivision(g) of this Section, and the Board may direct the Company to cease operation of the System. If the County elects to purchase the System, the Company shall promptly execute all appropriate documents to transfer title to the County, and shall assign all other contracts, leases, licenses, permits and any other rights necessary to maintain continuity of service to the public. The Company shall cooperate with the County, or such agency or person authorized or directed by the Board to operate the System for a temporary period, in maintaining continuity of service. Nothing herein is intended as a waiver of any rights the County may have.

(Arlington, Virginia)

F. Indemnification, Insurance, Liability for Damages

Sec. 41-13. Liability for Damages.

(a) Except for any liability which may accrue to the County with regard to its programming on any County Channels, the Company shall indemnify and hold the County harmless from all liability, damage, cost or expense (including reasonable attorney's fees) arising from claims for injury to persons or damage to property occasioned by reason of any conduct undertaken by reason of this Ordinance or its Certificate, irrespective of any negligence or fault of the County, its agents or employees. The County shall not and does not by reason of this Ordinance or the granting of a Certificate assume any liability of the Company whatsoever for injury to persons or damage to property.

(b) Within thirty (30) days after the effective date of its Certificate, the Company shall file with the Board and maintain on file throughout the term of the Certificate a liability insurance policy issued by a company duly authorized to do business in this State, insuring the County and the Company, with respect to the installation, operation and maintenance of the System.

(1) For bodily injury, including death, in:

(i) the minimum amount of _____ for any one person,
and

- (ii) the minimum amount of _____ for any one accident,
and

(2) For property damage in the minimum amount of _____

(c) Except for any liability which may accrue to the County with regard to its programming on any County Channels, the Company shall indemnify and hold the County harmless from all liability, damage, cost or expense (including reasonable attorney's fees) arising from any claims against the County which it may legally be required to pay as a result of the granting of a CATV certificate to the Company or from the operations conducted by the Company in the County. The damages and penalties shall include but shall not be limited to copyright infringements and all other damages arising out of the installation, operation, or maintenance of the System authorized, whether or not such act or omission complained of is authorized, allowed or prohibited by this Ordinance or the CATV CERTIFICATE ORDINANCE (§ 42).

(Arlington, Virginia)

G. Foreclosure, Receivership

Sec. 41-13. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Company shall notify the Board of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of Section 18(c) of this Ordinance, governing the consent of the Board to such change in control of the Company, shall apply.

Sec. 41-17. Receivership.

The Board shall have the right to cancel this franchise one hundred and twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and,

2. Such receiver or trustee, within said one hundred and twenty (120) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Certificate granted to the Company.

(Arlington, Virginia)

IX. APPLICANT SELECTION PROCESS

The selection of an applicant is a two step process: the community must determine first, what local needs an applicant must fulfill and second, which applicant can meet the community's requirements. The process of selecting an applicant will

be a bewildering and difficult period unless the franchising authority knows from the outset what information is needed and develops an orderly system for obtaining it.

The process is also important because it must be properly administered through a full public proceeding if the system is to receive FCC certification. The commission requires that the franchise or certificate contain "recitations and provisions" that demonstrate the franchising authority has approved the franchisee's legal, character, financial, and technical qualifications, as well as the adequacy and feasibility of the construction arrangements. These determinations must be part of a full public proceeding affording due process (Section 76.31(a)(1)). Without complying with these requirements a system cannot be certified to carry television signals. In discussing the rule the commission explained that a cable operator must submit a "detailed statement" showing that the franchising authority has complied.

The FCC expects that a public proceeding will meet the requirements of due process if it includes the following:

- publicly invited applications
- all applications placed on public file
- notification given to the public when an applicant files
- an opportunity for all interested persons to testify on the qualifications of the applicants which could be fulfilled with a public hearing
- a public report issued by the franchising authority setting forth the basis for its action

An application form that will elicit the information the franchising authority desires, in an organized manner, will ease the process. Public comment could then be directed to the application form, which should reflect the ordinance requirements.

In many municipalities the entire process of applicant selection is being assigned to a special regulatory committee that will conduct the process of evaluation and submit recommendations to the governmental unit responsible for official approval. Whoever conducts the proceeding, it is still necessary to have full public participation in the process.

Checklist

- Create an application form listing all areas of information to be submitted for selecting an applicant.
- Give notice that application forms are available and outline areas the franchising authority will weigh in the selection process.
- Set a deadline for filing.
- Give notice that applications have been filed and announce a procedure for commenting on the applicants. Give information as to where the applications are available for viewing by the public. Set a date for commenting, orally or in written form or both. Also set a date for reply evaluations if written comment is used.
- Have the committee responsible for evaluation, along with any expert help that may be needed, provide an evaluation for the selecting body.
- Make the selection and grant a franchise, listing the reasons for selecting the franchisee.

In Arlington County, Virginia, the following method was used to provide a comprehensive program for applicant selection.

*Example a**Sec. 42-1. Purpose of Chapter.*

The purpose of this chapter is to provide for the issuance of operating rights for CATV Systems in Arlington County and to provide the methods for the solicitation of applications and the granting of such operating rights.

Sec. 42-2. Definitions.

Unless the context clearly indicates that a different meaning is intended, the definitions appearing in Chapter 41, CATV REGULATION shall apply to this chapter. In addition, the following definitions are intended:

- (a) "Applicant" means the person, firm, company, corporation or proprietorship filing an application for a CATV Certificate of Public Convenience and Necessity.
- (b) "CATV Certificate of Public Convenience and Necessity," sometimes herein referred to as "Certificate," means the grant of authority to operate a CATV "System" in Arlington County, Virginia, as the same is defined in Chapter 41-2 of the Arlington County Code.
- (c) "Public Utilities Commission," sometimes referred to as "PUC," means that agency of the Arlington County Board appointed pursuant to official actions of the Board and designated as "Public Utilities Commission."

Sec. 42-3. Certificate Required.

It shall be unlawful to commence or engage in the business of construction or operation of a CATV System without a CATV Certificate.

Sec. 42-4. Applications for Certificate.

Any person may file an application for a Certificate upon payment of the prescribed fee. Prospective applicants will be expected to be aware of any restrictions on their eligibility that are or may be imposed by this Chapter or by Chapter 41 of the Arlington County Code CATV REGULATION or by the Federal Communications Commission (F.C.C.). Three-fourths ($\frac{3}{4}$) of the application fee will be refunded to unsuccessful applicants. The entire application fee received from a successful applicant will be retained as partial payment of the cost of regulation by the County.

- (a) Applications shall be in writing and shall contain, but not be limited to, the following information:
 - 1) Name, address, and form of business of the applicant. If the applicant is a partnership or joint venture, the application shall give the names and addresses of each participant and all details relating to their joint venture and partnership. If the applicant or any of the partners or participants in a joint venture is a corporation, the applications shall show the names and addresses of its officers, directors, and stockholders owning more than 5% of the outstanding stock as measured by its book value. Data required as to one corporation's participation in a joint venture shall be submitted for each participant. In cases where corporate stock is held by another corporation, a parent, affil-

iate or subsidiary, the same details as to participants in the parent, affiliate or subsidiary corporation shall be required. The principal officers and places of business of each such corporation shall be included on the application.

- 2) A description of the CATV System proposed to be installed and operated, including such detail as may permit a proper evaluation of the merits of the proposal. The description shall contain detail as to capability of the components which the applicant proposes to utilize, including such features as two-way capability, switching, terminal facilities, use of antennae, the provision of services not required by Chapter 41 but which may be indicative of the applicant's intent and desire to serve the public.
 - 3) A description of the applicant's plans for cablecasting.
 - 4) Copies of any agreements which the applicant has with any other person relating to the prospective CATV operation.
 - 5) Current certified audited financial statements of the applicant, including individual statements for each participant in any joint venture. The rendering of the financial statements shall be in such form as will clearly reveal the extent of the applicant's CATV operations, including investment in CATV facilities, revenues and expenses of operations.
 - 6) A proposed financial plan for the applicant's proposed Arlington operation indicating potential and probable sources of capital.
 - 7) An engineering plan, indicating a schedule for the commencement of construction and commencement of operations, and a completion timetable.
 - 8) A listing of all CATV Systems owned by the applicant or in which the applicant has substantial interest, including joint ventures, and minority financial interests exceeding 5%. The list shall contain statements regarding each system, as to its location, number of homes presently in the territory being served or to be served, the number of homes passed and the current number of subscribers, gross revenues and expenses attributable to CATV operations for the most recent twelve-months' period for which such data are available. Accompanying the list shall be the name and address of each local regulating authority. The listing of such Systems shall be construed as authority for the PUC to make inquiry as to the ability and responsibility of the applicant and its officers.
- (b) The application shall include a declaration by the applicant that the application is true and complete, and that no person not shown in the application has, or without prior written consent of the Board, will have, any equity interest exceeding 5% in the applied for operating rights for a CATV System.
 - (c) The application shall include a declaration that the applicant agrees to comply with the CATV REGULATION ORDINANCE for Arlington.

ton County (§ 41) and further agrees that the applicant will abide by the County's decision, so far as the granting of, or failure to grant, permission to operate a CATV System in Arlington County is concerned.

- (d) The application shall also contain a declaration that, if a Certificate is granted, the applicant will within 30 days, fully comply with requirements of the F.C.C. by filing such documents as the agency may require.
- (e) The application shall also contain the statement by the applicant that he will, upon proper request by the County, provide such other facts as may serve to reflect upon the materiality of the application, the quality, character and ability of the applicant, its affiliates, parents or subsidiaries.

Sec. 42-5. Procedure for Awarding Certificate.

- (a) The County Board shall have final authority in the awarding of a certificate for a CATV System for Arlington County.
- (b) Upon the request of the County Board, the PUC shall solicit applications for a CATV Certificate from the greatest possible number of potential applicants by advertising and other reasonable means. The Public Utilities Commission shall make the initial evaluation of the applicants in a fair and impartial manner, and make its recommendations to the County Board.
- (c) Within 120 days of the solicitation of applications, all applications will be due. They shall be filed with the Arlington County Public Utilities Commission, Court House, Arlington, Virginia 22201.
- (d) Within 90 days of the due date for receipt of applications, the PUC shall file its recommendations with the Board.
- (e) Following receipt of the PUC recommendations, the Board shall schedule a public hearing not less than 30 days nor more than 60 days subsequent to the date the recommendations are first considered by the Board.
- (f) All bona fide applicants (those paying the prescribed fee, filing complete applications, and responding to all proper inquiries for additional data) may participate and be represented at the hearing, along with any interested party, citizen or agency.
- (g) After hearing all of the evidence, opinions and representations, the Board shall render its decision to award or not award a certificate based upon its finding as to the Public Convenience and Necessity.

Sec. 42-6. Fees for Application.

Each application shall be accompanied by a filing fee in the amount of two thousand dollars (\$2,000.00) which shall be payable to the Treasurer of Arlington County, Virginia. All such fees shall be placed in a deposit account until the award of a Certificate is made by the Board. Unsuccessful applicants shall be given a refund of that portion of the application fee as provided for in § 42-4. The entire fee paid by the successful applicant, together with such portions of other applicant's fees as are not refunded, shall be credited to the general fund of the County for the

purpose of investigation of CATV Certificate applications and establishing the procedures for CATV regulation.

Sec. 42-7. Permits.

In addition to such permits as may otherwise be required by the County or other authority having jurisdiction, the Certificate Holder shall be required to obtain permits for its installations of cable, apparatus, and trunk and feeder lines.

- (a) Procedure. On or before the last weekday of the first month of each calendar quarter the Certificate Holder shall apply for a permit to cover the projected installations for the following calendar quarter. Such permit application shall indicate the location of each trunk and feeder line, and the location of each amplifier.
- (b) Permits granted. The Agency designated by the Board shall review the permit applications and shall grant, modify, or deny the permits within forty (40) working days of the due date of the applications. The granting of such permits by the Agency shall in no way limit the Certificate Holder's responsibility for acquiring such other permits as may be required by other authority having jurisdiction.
- (c) Permit fees. Each application hereinabove required shall be accompanied by payment of the following:
 - (1) For trunk and feeder lines, per mile or fraction thereof . \$20.00
 - (2) For amplifiers, each \$10.00

Adopted on February 13, 1971.

This example lists qualifications for selection and criteria for weighing the qualifications. The procedure closely reflects the above discussion of the Applicant Selection Process.

Example b

Criteria for Selection of Franchisees.

- a. *Local ownership.* Preference shall be given applicants with a substantial number of executives and owners who reside in the City.
- b. *Non-Profit Ownership.* Preferences shall be given to applicants for franchise representing non-profit organizations.
- c. *Service Priorities.* (1) First priority consideration shall be given to System capability in terms of no-cost telecasting production facilities and service available to municipal and educational institutions and community groups and individuals. (2) Second priority consideration shall be given to System provision for two-way non-voice communications. (3) Third priority consideration shall be given to total channels provided by the System.
- d. *Financial Capacity.* The evidence of financial ability required in the applicant's proposal shall be such as to assure ability to complete the system within three years of the date of franchise.
- e. *Rate Schedule.* Preference shall be given to applicants with the most reasonable installation and rate schedule.
- f. *Licensees.* No past or present cable television licensee of the City shall have preference among applicants.

The City Council shall award a franchise to any applicant only after a public hearing on the application and information filed therewith, and such awards shall be based on the satisfaction of the criteria above, limiting franchisees to a reasonable number in consideration of economic and administrative feasibility. No franchise shall be awarded except upon a showing by the applicant of satisfaction of these criteria. The City shall actively solicit applicants for initial franchises who will meet the highest standards of service and character.

Qualifications of Franchisee. In selecting a franchisee pursuant to this ordinance; the City shall consider the following criteria. Approval of which shall be a prerequisite to the granting of the franchise:

- a. The applicant shall furnish biographical data of its proposed management demonstrating capability of the applicant to operate a CATV System.
- b. The applicant shall furnish sufficient evidence to demonstrate financial ability and technical capability, including experienced personnel, to construct, operate, and maintain the system. Such financial ability may be demonstrated by assets of the applicant or by the applicant's ability to secure adequate financing.
- c. The applicant shall furnish information as to the programming services and public services which it shall propose to provide.
- d. The franchisee shall file with the City Clerk a map showing the location of all CATV cable lines to be erected within two years of the granting of the franchise.
- e. The applicant shall also furnish information in the form of a proposal as to the following:
 1. A brief description of the employment practices related to the hiring and training of minority people.
 2. The off air signals to be carried initially.
 3. The number of channels offered and the potential of diversified services to local government educational institutions, community groups, householders and local commercial interests.
 4. Cost estimates of development, installation and system maintenance.
 5. Revenue forecasts for the next five years of service.
 6. Projected development of customer and community services, indicating priorities in development.
 7. A Schedule of rates for installation charges, monthly service fees and relocation charges.
 8. Name and principal residence of executives and/or owners in the applicant's organization or company and any other associated organization or company. Name and principal residence of the system manager and other key personnel.
 9. Copies of all written pole agreements between applicant and any utility company.
 10. Such other information as the City may request.

The foregoing information shall be submitted by the applicant in an integrated form, entitled "CATV Proposal."

(East Lansing, Michigan, draft)

This example is part of the State of Massachusetts legislation; although the section used contains no procedure, it sets forth what an applicant should demonstrate.

Example c

No such license or renewal thereof shall be issued except upon written application to the appropriate issuing authority on an application form prescribed by the commission. Such form shall contain such information as the commission may prescribe as to the citizenship and character of the applicant, and the financial, technical and other qualifications of the applicant to operate the system; complete information as to its principals and ultimate beneficial owners, including, in the case of corporations, all stockholders, both nominal and beneficial, owning one per cent or more of the issued and outstanding stock, and, in the case of unincorporated associations, all members and ultimate beneficial owners, however designated; complete information on the extent and quality of service, number of channels, hours of operation, variety of programs, local coverage, safety measures, installation and subscription fees; and such other information as the commission may deem appropriate or necessary. Such application shall be signed by the applicant or by a duly authorized representative, evidence of whose authority shall be submitted with the application. Each applicant shall make full disclosure of the true ownership of the applicant and of the equipment to be employed in rendering service and of the source of funds for the purchase, lease, rental and installation of such equipment. Each applicant shall set forth as completely as possible the equipment to be employed, the routes of the wires and cables, the area or areas to be served, the approximate starting and completion dates of construction of the system and the date service will actually be available to the areas named.

(Massachusetts State Cable Act)